IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Bail Appl..No. 4366 of 2007()

CRIME 1011/07 OF KOTTARAKARA POLICE STATION

APPLICANT/ACCUSED

MOHANAN PILLAI, S/O.VASUDEVAN PILLAI,
VILAYIL KIZHAKETIL, KULAKADA P.O.,
KOTTARAKARA.

BY ADV. SRI.ALAN PAPALI
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT

STATE OF KERALA, (CRIME NO.1011/05 OF
KOTTARAKARA POLICE STATION, SHO KOTTARAKARA
POLICE STATION), REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4366 of 2007

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Dated this the 2nd day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 4th accused in a crime registered, inter alia, under Sections 420, 468 and 471 I.P.C. Altogether there are four accused persons as per the case diary now.

2. The crux of the allegations is that forged passes were used in connection with transportation of river sand. Accused 1 to 3 are allegedly responsible for forging the document and making it available to be used for transportation of river sand. The petitioner/ A4 is allegedly the Convener of the Kadavu Committee, at whose instance the passes would be issued to persons on payment of money.

3. The gravamen of the allegations against the petitioner now is that he issued a forged pass to a vehicle owner, who had made payment. That vehicle was intercepted with a load of sand. The driver handed over an old pass. The owner later produced a pass before the authorities. That pass was found to be a forged one. According to the owner, this was handed over to him by the petitioner

on payment of money. Crime has been registered. Investigation is in progress. In the F.I.R. no specific person is named as an accused, though the name of the driver of the vehicle is shown in the relevant column as the accused. Accused 1 to 3 have been arrested in 2005. The petitioner apprehends imminent arrest.

4. The learned counsel for the petitioner first of all contends that the petitioner has not been arrayed as an accused so far. The learned Prosecutor submits that this assertion is incorrect. By report dt. 13.12.2005, copy of which report is available in the case diary, the petitioner has been arrayed as the 4th accused. He is shown as accused in the case diary on and after that date. The learned counsel for the petitioner then submits that the petitioner's enquiry with the court reveals that such a report dt.13.12.2005 has not been received so far. The learned Prosecutor was directed to take specific instructions. The learned Prosecutor has placed before court the photocopy of the local delivery book of the police station, which shows that a report in the crime had been handed over to the court. The originals are not available. I need not express any final opinion as to whether such report has been received or not. Suffice it to say, the fact that the original report had not been filed before court or the fact that report is not available

in court cannot deliver any advantage to the petitioner. I am satisfied that there can be a direction to the Investigating Officer to file a fresh report along with the copy of the report dt. 13.12.2005 to make it clear that the Investigator wants the petitioner to be arrayed as 4th accused. Such report shall be filed by 10.8.2007 at the latest.

5. We now come to the claim for anticipatory bail by the petitioner. The case diary has been perused by me. The owner of the vehicle has right from the early dates made a categoric statement that he had made payment and has obtained the pass in question from the petitioner. The pass in question is found to be forged. There is no serious dispute on that aspect. The available materials suggest that the said pass is forged. In these circumstances I am of opinion that the petitioner's claim for anticipatory bail is not justified at all. The petitioner must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the normal course. I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate

and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously. The learned Prosecutor undertakes that the petitioner shall not be arrested till 10.8.2007. That undertaking is accepted.

(R. BASANT)
Judge

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